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No.: ICC-01/09-01/11
Date: 3 November 2015

TRIAL CHAMBER V(A)

Before: Judge Chile Eboe-Osuji, Presiding
Judge Olga Herrera Carbuccion
Judge Robert Fremr

SITUATION IN THE REPUBLIC OF KENYA

IN THE CASE OF

***THE PROSECUTOR v.
WILLIAM SAMOEI RUTO AND JOSHUA ARAP SANG***

Public

**Ruto Defence Request for Mr. Ruto's Excusal from Presence at Trial under Rule
134 *ter***

Source: Defence for Mr. William Samoei Ruto

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor

Ms. Fatou Bensouda
Mr. James Stewart
Mr. Anton Steynberg

Counsel for William Samoei Ruto

Mr. Karim A. A. Khan QC
Mr. David Hooper QC
Mr. Essa Faal
Dato' Shyamala Alagendra
Ms. Leigh Lawrie

Counsel for Joshua Arap Sang

Mr. Joseph Kipchumba Kigen-Katwa
Ms. Caroline Buisman

Legal Representatives of the Victims

Mr. Wilfred Nderitu

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

Ms. Paolina Massida

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar

Mr. Herman von Hebel

Counsel Support Section

Deputy Registrar

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

Introduction

1. Mr. William Samoei Ruto is an accused before the Court who is concurrently mandated to fulfil functions of an “important and extraordinary [...] dimension” as Deputy President of the Republic of Kenya.¹ The Defence for Mr. William Samoei Ruto (“Defence”) hereby requests the Trial Chamber to excuse Mr. Ruto from attending the Status Conference scheduled on 24 and 25 November 2015 due to Mr. Ruto’s extraordinary obligations at the highest national level. Specifically, the date of the status conference conflicts with the maiden visit of His Holiness Pope Francis to Kenya on 25, 26 and 27 November. In the alternative, the Defence respectfully request that the oral hearing of the no case to answer filing (case filing number 1990) be rescheduled to after 28 November 2015. This request is filed pursuant to Article 63(1) of the Rome Statute (“Statute”) and Rule 134 *ter* of the Rules of Procedure and Evidence (“Rules”).

Submissions

2. Rule 134 *ter* was adopted by consensus by the Assembly of States Parties (“ASP”) at its 12th Session on 27 November 2013.² It provides:

Excusal from presence at trial

1. An accused subject to a summons to appear may submit a written request to the Trial Chamber to be excused and to be represented by counsel only during part or parts of his or her trial.
2. The Trial Chamber shall only grant the request if it is satisfied that:
 - (a) exceptional circumstances exist to justify such an absence;
 - (b) alternative measures, including changes to the trial schedule or a short adjournment of the trial, would be inadequate;
 - (c) the accused has explicitly waived his or her right to be present at the trial; and

¹ ICC-01/09-01/11-777, paras. 50-51.

² Resolution ICC-ASP/12/Res.7 (Advance Version).

(d) the rights of the accused will be fully ensured in his or her absence.

3. The Trial Chamber shall rule on the request on a case-by-case basis, with due regard to the subject matter of the specific hearings in question. Any absence must be limited to what is strictly necessary and must not become the rule.

3. The Ruto Defence submits that the conditions to be excused, as provided in this provision, are met.

(a) Exceptional circumstances

4. The Defence submits that exceptional circumstances exist to justify Mr. Ruto's absence.
5. From 25 to 30 November 2015, His Holiness Pope Francis will make his first trip to Africa, visiting Kenya, Uganda and the Central African Republic to address crucial issues for the continent, including inter-religious violence, radicalisation of youth and poverty. The papal visit to Kenya, scheduled from 25 to 27 November is of the very highest importance to the Republic of Kenya and millions of Kenyans, twenty year after the last papal visit in September 1995. The itinerary of Pope Francis includes a meeting with President Uhuru Kenyatta, the Deputy President and the Archbishop of Nairobi, an inter-religious meeting at the Apostolic Nuncio, the celebration of a Holy Mass at the University of Nairobi, and a major address to the youth from across the country at Kasarani Stadium. The Kenyan authorities expect well over a million Kenyans to converge on Nairobi over this period.
6. The historic occasion of His Holiness's visit necessitates Mr. Ruto's presence in Nairobi on these dates to receive the pontiff and to hold important meetings with His Holiness. The Defence respectfully submits that these exceptional circumstances necessitate the present application and requested relief.

(b) Alternative measures

7. In the event that Chamber declines the request to excuse Mr. Ruto's attendance on 24 and 25 November 2015, the Defence respectfully prays that the Chamber postpone the scheduled hearing to 30 November and 1 December 2015, or such later date, in order to allow Mr. Ruto to be present in Kenya during the papal visit and to hold the meetings and attend the events scheduled for that period.

(c) Explicit waiver

8. In the event that the request is granted, the Defence undertakes to file an explicit waiver signed by Mr. Ruto within twenty-four hours.

(d) Rights of the accused

9. The Defence submits that Mr. Ruto's rights will be fully ensured in his absence. His counsel assisted by his Defence team will be present and act fully to ensure the fairness of Mr. Ruto's trial. The e-Court access system and other telecommunications will allow Mr. Ruto to be fully informed of the proceedings on an on-going basis, and transcripts of the hearing will be provided to him as soon as they are available. Mr. Ruto has full confidence that any decision made by his counsel in his absence will be favourable to him. Accordingly, Mr. Ruto's rights will be adequately represented in his absence.

Conclusion

10. In these circumstances, the Defence submits that Mr. Ruto's request to be excused from the hearing scheduled on 24th and 25th November 2015 is justified and respectful of the rights of the accused.

11. Accordingly, the Defence requests that the Trial Chamber grant Mr. Ruto's request for excusal pursuant to Rule 134 *ter* or, in the alternative, postpone the hearing to 30th November and 1st December 2015, or such later date as deemed appropriate by the Chamber.

Respectfully submitted,



Karim A.A. Khan QC

Lead Counsel for Mr. William Samoei Ruto

Dated this 3rd Day of November 2015

At The Hague, Netherlands